

Questions for Oklahoma related to Earthjustice Comments on Proposed Permitting Program

These questions are intended for us to gather the information we need to be able to respond to the issues raised in the comments received on the proposal. We are required to respond to their comments and need your input to do so, as the failure to respond to significant comments is grounds to overturn an action.

Overall, we need to know if their comments are an accurate reflection of your regulations (explicitly, not necessarily your intent) and your overall program. We have identified some of the most significant topics, but would welcome additional areas that OK would like to address.

Compliance Issues

- ☐ In their 3/19/2018 comments, Earthjustice et. al. have alleged a widespread pattern of non-compliance among OK facilities and that DEQ has generally declined (or lacks the budget) to bring these facilities into compliance. The comments identify groundwater impacts at several disposal sites. For example, GDRA conducted groundwater monitoring activities and prepared an annual report to meet Oklahoma DEQ requirements under OAC 252:517.
 - Are these characterizations accurate?
 - What facts can OK give us to respond to their claims? For instance, what is the current compliance status of the GDRA site with regard to the October 2017 deadline to meet applicable federal requirements?
- ☐ Regarding publicly accessible internet site requirements, we noted that several facilities have not posted the required documentation by the October 2017 deadline. Sooner, for example, has only submitted a fugitive dust control plan and the fugitive dust annual report. What is DEQ's approach to ensuring that the required compliance information is posted?

Prior Approval/Permit Deficiencies

- ☐ Do OK permitting program regulations require facilities to submit to the State their permit documents so that the State can **review and approve** them? (e.g., GWM plans, GWM sampling and analysis procedures, alternative source demonstration, hazard potential assessments, structural stability assessments, emergency action plans, closure plans, etc.)
- ☐ How is the state guaranteeing compliance if they are not requiring approval of these documents? How will this be handled in the case of the permits for CCR units that already have been issued? Will these facilities need to get new permits? Will they be required to get modifications? Will the modifications require the submittal and approval of these documents?
- ☐ Does the permit program require that the documentations/demonstrations be incorporated into the permits? (they reference cases)

Public Participation

- ☐ With lifetime permits, how will the public be able to comment/participate if permits have already been issued?
- ☐ It appears that most modifications would be classified as Tier I. Is this correct? For example, OK considers closure plans to be a Tier 1 modification which requires no public participation. What types of modifications would be considered Tier II modifications?
- ☐ A commenter alleges that OK does not require facilities to include site-specific compliance proposals and demonstrations such as closure plans, groundwater monitoring plans, corrective

action plans, etc., to be incorporated into a CCR permit as site-specific conditions; nor does OK require that these are made available to the public for review and comment. Is this an accurate representation of the OK program?

State Resources/Enforcement

- ☐ Could OK address the question regarding concerns that the state does not have adequate resources to implement and enforce the CCR regulations? ODEQ has gone on record voicing concern about their ability to adequately enforce certain regulations.
- ☐ Is there a record on ongoing enforcement? Did ODEQ allow GRDA an extension to complete groundwater sampling and analysis? If so, under what authority?

Modifications to State Program

- ☐ Does the OK program provide for any procedures for revising the program, if and when the federal CCR regulations change? Would these state procedures include an opportunity for public comment?